states a new cause of action. *Hackett v. Bank of Calif.* (1881) 57 Calif. 335, *Gates v. Paul* (1903) 117 Wis. 170, 94 N. W. 55. See COMMENT (1918) 27 YALE LAW JOURNAL, 1053; *cf.* (1919) 28 *ibid.*, 693. Various other tests have been laid down to determine the identity of the causes of action. Would the same evidence support both of the pleadings? *Scoville v. Glasner* (1883) 79 Mo. 449; *Whalen v. Gordon* (1899, C. C. A. 8th) 95 Fed. 305. Is the measure of damages the same in each case? *Hurst v. Detroit City Ry.* (1891) 84 Mich. 539, 48 N. W. 44. Are the allegations of each subject to the same defences? *Goddard v. Perkins* (1838) 9 N. H. 488; *Phoenix Lumber Co. v. Houston Water Co.* (1901) 94 Tex. 456, 61 S. W. 707. All of the above suggested *criteria* seem to deal with the method of stating the cause of action rather than with the underlying substantive right. It would seem that the test which has the proper basis is whether or not a judgment upon the original pleading would bar an action upon the amendment, or *vice versa*. *Reheme v. Clinton* (1879) 2 Utah, 230; *Van Patten v. Waugh* (1904) 122 Iowa, 302, 98 N. W. 119. It is submitted that the sole inquiry should be whether or not the plaintiff, in his amendment, is still seeking redress for the violation of the same primary right set out in his original petition. Using this as a test the result reached in the instant case is clearly correct.

PROPERTY—SURFACE WATERS—OBSTRUCTION OF NATURAL FLOW.—The plaintiff and the defendant owned adjoining tracts of land. The plaintiff brought an action for alleged damages to his crops caused by the erection of an embankment on the defendant's land, whereby the surface water, which would naturally flow upon the land of the defendant, was sent back to the plaintiff's land. *Held*, that he should not recover. *Johnson v. Leazenby* (1919, Mo.) 216 S. W. 49.

Some courts, applying what is called the civil-law theory, hold that the lower owner is under a duty to receive surface water in its natural flow. *Shaw v. Town of Sebastopol* (1911) 159 Calif. 623, 115 Pac. 213; *Hoehn v. East Side Levee & Sanitary District* (1916, Sup. Ct.) 203 Ill. App. 48; *City Dairy Co. v. Scott* (1916) 129 Md. 548, 100 Atl. 295; *Crane v. Valley Land Co.* (1918, Mich.) 169 N. W. 18. The *real* common-law rule is the same as the civil-law rule. *Ewart v. Cochrane* (1861, H. L.) 4 Macq. 117; *Beer v. Stroud* (1890) 19 Ont. Rep. 10; see 3 Farnham, *The Law of Waters and Water Rights* (1904) sec. 889b. But other courts, as was done in the instant case, apply, under the misnomer of the "common-law" theory, the common-enemy rule. *Barkley v. Wilcox* (1881) 86 N. Y. 140, 40 Am. Rep. 519; *Gibson v. Duncan* (1915) 17 Ariz. 329, 152 Pac. 856; *Rutkoski v. Zalaski* (1916) 90 Conn. 108, 96 Atl. 365. That rule is that the lower owner has the privilege of building embankments to ward off water or filling and grading his land, regardless of the consequences to the property of the upper proprietor. *Walther v. Cape Girardeau* (1912) 166 Mo. App. 467, 149 S. W. 36; *Louisville N. O. & T. R. R. v. Jackson* (1916) 123 Ark. 1, 184 S. W. 450. There are some jurisdictions which make the reasonableness of the use the basis of determining whether or not the lower owner may obstruct surface waters. *Swett v. Cutts* (1870) 50 N. H. 439, 9 Am. Rep. 276; *Peterson v. Lundquist* (1908) 106 Minn. 339, 119 N. W. 50; see COMMENT (1902) 12 YALE LAW JOURNAL, 41. Still other authorities have suggested that the court in applying any of the rules should distinguish between rural and city property. *Cf. Levy v. Nash* (1908) 87 Ark. 41, 112 S. W. 173, 20 L. R. A. (N. S.) 155, note.

QUASI-CONTRACTS—CARRIAGE OF THE MAIL BY RAILROAD.—The plaintiff sued the United States to recover a balance claimed to be due for carrying mail through a series of years, basing its claim upon an implied contract arising from the fact that, having been compelled to carry the mail, its property had been taken